

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 708 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

(No. 1 to 5 NO)

THE STATE OF GUJARAT

Versus

ARJUNSINHBHAGWANSINH

Appearance:

MR. KAMAL MEHTA, LD.PUBLIC PROSECUTOR for Petitioner
SERVED for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 11/08/97

ORAL JUDGEMENT

The Respondents came to be acquitted of the offence punishable under section 325 and 323, read with section 114 I.P.C. by the Ld. JMFC, Jambusar, in Criminal Case No. 606 of 1988, under the orders dated April 06, 1990. The said orders of acquittal are in challenge in the present Criminal Appeal.

The case of the prosecution appears to be that, complainant Somabhai was staying in his field in company of his wife Kantaben. His brother Motibhai used to stay in the vicinity in company of his daughter Sharda. It appears that, there was a quarrel between two girls, namely Sharda and one Bela, who happen to be the daughter of Respondent no.3. According to the case of the prosecution, following this quarrel, the accused persons had approached the complainant and the Respondent no.4 Balwantsinh had given a blow with a Danti on the leg of the complainant Somabhai, as a result of which he had received serious injuries. He had filed the F I R before the police. On the appreciation of the evidence, the Court below has come to the conclusion that, even the say of the injured complainant was not free from doubt. The Court below, therefore, has recorded the orders of acquittal.

The evidence of complainant Somabhai, PW-1, Exhibit-10 when is perused, it appears that, according to him, there was a quarrel between Sharda and Bela and later on he was assaulted by the Respondent accused No.4 Balwantsinh by a danti. It cannot be disputed that danti is a weapon with a long blade, having teeth. Somabhai the complainant has never said in his evidence that the blow was tendered on his leg by the blunt portion of the danti or by the handle portion of the same. Therefore, if the blow were to be given by the edge of teeth of the danti, the nature of the injuries would have been changed to a very great extent. In his F I R at Exhibit-11 also the complainant does not say that the blow was tendered by the blunt portion of the blade or by the handle portion. This discrepancy in the case of the prosecution was not unknown to them and therefore, when Sharda, PW-2, Exhibit-12 came to be examined before the Court below, she has tried to make an improvement in the case of the prosecution, by saying that, the blunt portion of the blade of the danti was used while tendering the blow. It is clear that, this was not her say before the police. More over, the say of Sharda at Exhibit-12 is that, during the incident she had received stick blows. But she has candidly admitted that, she had not stated anything regarding her own injuries by stick blows to the police, and that, she had never taken any treatment. The say of Sharda at Exhibit-12 therefore to the effect that the blunt portion of the blade of the danti was used appears to be a clear after thought. The medical evidence tendered by Dr. Narendrakumar Joshi, PW-6, Exhibit-19, would go to show that, there was contusion lacerated wound on the right leg of the complainant, coupled with a fracture of right femur. This injury

could not have been caused by the teeth portion of the blade of the danti. This discrepancy coming on surface from the medical evidence as indicated by me was sought to be explained through the evidence of prosecution witness Shardaben, which in my opinion, appears to be a clear after thought. The Court below has also taken into consideration an important aspect of the matter that, though very many independent eye witnesses were available nobody had come forth to support the say of the prosecution. More over, though the say of the prosecution is that, all the accused persons were duly armed with deadly weapons, there was not a single injury on the person of the complainant, which would have been caused by such weapons. The Court below therefore was justified in coming to the conclusion that, a true picture regarding the incident was not being presented before the Court during the trial. This has resulted in to the judgment of acquittal under challenge. Nothing is being pointed out by the Ld. Govt. counsel so as to persuade me to take a different view. The present Appeal therefore requires to be dismissed. I order accordingly. The Judgment of Acquittal pronounced by the Court below is hereby upheld and confirmed.

/vgn.